

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MARY BOOTH, as Personal Representative of the  
Estate of ADRIAN BOOTH, Deceased,

Plaintiff-Appellee,

v

RHEA HENDERSON,

Defendant-Appellant,

and

AVIS RENT A CAR SYSTEMS, INC.,

Defendant.

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UNPUBLISHED  
September 21, 2006

No. 261636  
Wayne Circuit Court  
LC No. 03-300654-NI

Before: Cavanagh, P.J., and Markey and Meter, JJ.

PER CURIAM.

Defendant appeals as of right an order of additur in favor of plaintiff. We reverse.

Defendant argues that the trial court erred when it awarded additur without obtaining her consent. We agree. This Court reviews the trial court's decision on a motion for additur for an abuse of discretion. *Hill v Sacka*, 256 Mich App 443, 460; 666 NW2d 282 (2003).

The grounds for granting additur are found at MCR 2.611(E)(1), which provides:

If the court finds that the only error in the trial is the inadequacy or excessiveness of the verdict, it may deny a motion for new trial on condition that within 14 days the nonmoving party consent in writing to the entry of judgment in an amount found by the court to be the lowest (if the verdict was inadequate) or highest (if the verdict was excessive) amount the evidence will support.

In the present case, the court granted plaintiff's request for additur. However, defendant did not consent to the additur order below, as required by MCR 2.611(E)(1). According to MCR 2.611(E)(1), a trial court may only grant additur on the condition that the non-moving party consents to the award within 14 days. Because the court did not obtain consent from defendant, the nonmoving party, the trial court erred when it awarded additur.



Moreover, the trial court abused its discretion when it granted additur because the evidence supported the jury verdict of no cause of action and award of zero damages. Appellate courts must defer to a trial court's decision to grant or deny additur because of the trial court's superior ability to view the evidence and evaluate the credibility of the witnesses. *Phillips v Deihm*, 213 Mich App 389, 404; 541 NW2d 566 (1995). However, "when reviewing a trial court's decision on additur, this Court must consider whether the jury award was supported by the evidence." *Sacka, supra*. This Court will not "overturn a verdict if there is an interpretation of the evidence that provides a logical explanation for the jury's findings." *Robertson v Blue Water Oil Co*, 268 Mich App 588, 595; 708 NW2d 749 (2005).

The evidence presented showed that defendant instantly killed Adrian Booth while Booth was riding a trail bike. Booth was hit as defendant attempted to turn into her driveway. Before defendant attempted to turn into the driveway, she looked to view oncoming traffic. The evidence showed that defendant's headlights and turn signal were on prior to the turn. However, the evidence showed that Booth operated the bike without a helmet and without headlights. The evidence also showed that Booth was driving recklessly. Booth was driving over the speed limit at the time of the accident and Booth ran several stop signs prior to the accident. For the reasons stated, the jury's verdict was consistent with the evidence presented.

And, this evidence supported the jury award of zero damages. Booth was riding the bike without a helmet and headlights, was speeding, and driving recklessly prior to the accident. Although plaintiff testified extensively regarding the impact of Booth's death on his family, the jury, as the finder of fact, concluded that damages were not warranted in this case. "There is no legal requirement that a jury award damages simply because liability was found. Indeed, before damages can be awarded, they must be proved." *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 173; 568 NW2d 365 (1997). Since the jury concluded that no damages were warranted, and a logical view of the evidence supports that conclusion, the trial court abused its discretion when it awarded additur.

Reversed and remanded to the trial court for entry of judgment on the original jury verdict of zero dollars in damages. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Patrick M. Meter